

REMARKS

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

This amendment changes claims in this application. A detailed listing of all claims that are, or were, in the application, irrespective of whether the claim(s) remain under examination in the application, is presented, with an appropriate defined status identifier.

Claims 1, 2, 6, 7, 11 and 12 have been amended. Accordingly, claims 1-15 remain pending in the present application.

Claims 1-15 have been rejected under 35 USC 103 over Shavit et al. ('156). This rejection is respectfully traversed and reconsideration thereof is requested.

Shavit et al. is directed to a system for facilitating direct concurrent communication sessions between independent buyers and independent sellers. It includes a payment service and a freight service, and provides a log of transactions. The Shavit system facilitates concurrent sessions between users, and is not set up for a multiple user supply chain, and in particular, is not set up for communication in an auction format. Moreover, there is no disclosure in Shavit of generating a forecast of perishable food product sales for a remainder of the perishable food product promotion. Likewise, there is no disclosure of the claim limitation of a supply chain management computer calculating a surplus of perishable food products at the independent franchise outlet based on the forecast of perishable food product sales and current inventory. Likewise, there is no disclosure of the claim limitation of making the surplus of the perishable food products accessible to the independent franchise outlets, distributors, and suppliers utilizing a network based interface. Finally, there is no disclosure of claim limitation of the supply chain management computer auctioning surplus perishable food products from at least one of the independent franchise outlets utilizing the network-based interface.

Regarding the examiner's official notice of online auctioning of surplus product, such surplus does not relate to perishable food products where there is a narrow time frame to act

before the product completely loses its value. The ebay.com auction site does not relate to an operation within a supply chain and does not auction perishable food, and does not have an relationship to POS data or generating a forecast, much less a forecast in a perishable food product promotion.

Thus, there is no motivation that would drive one of ordinary skill in the art to combine the Shavit system of concurrent buyer-seller sessions with ebay.com to come up with applicants' claimed system. Moreover, even if these references could be combined, (which they cannot), the basic claim elements of receiving POS data from outlets within a franchise supply chain during a perishable food promotion, generating a forecast based on that POS data, calculating a surplus and making that information available online to multiple levels of a franchise supply chain, and then conducting an auction within the supply chain are missing. There is a completely different dynamic present when perishable foods are involved within the context of a supply chain for a franchise, where the outlets provide substantially the same products, so that even though the products are highly perishable, they can be auctioned quickly to other outlets, distributors and suppliers in the supply chain who may have a shortage in that particular product for the ongoing promotion. This invention is particularly useful in the face of aberrations in expected selling patterns, where, for example, a restaurant may have much lower than expected sales because of a newly initiated road construction project. Thus, the perishable food from that restaurant can moved quickly to other parts of the supply chain where the product is needed.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or

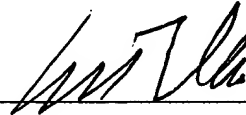
even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date

5/19/04

By



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